and America, it would never have reached its present state of perfection.

We may now refer to certain well recognised exceptions to the foregoing rules.

1. Where the defendant had reason to expect that children might come upon his works, he is culpable for not so constructing his machinery and so using it, that detriment shall not accrue to them: *Kay* v. *Penna. Ry.*, 65 Penn. St. 269; *Stout* v. *S. C. & P. Ry.*, 11 Am. L. Reg. N. S. 226; *B. & J. Ry.* v. *Snyder*, 18 Ohio N. S. 399; *Lynch* v. *Nurdin*, *supra*.

2. Where a child is in the keeping of an attendant, others having relations of duty towards the child will not be required to exercise any greater circumspection than in the case of an adult. And any negligence suffered to be committed by the child through the inattention of the attendant, will have the same effect in precluding a recovery, as in the case of an adult: *Waite* v. *North Eastern Ry.*, E. B. & E. 719; 5 Jur. N. S. 936. So that in the principal case, if the child had been in the care of an adult, it might not have become the duty of the conductor to drive him off the front platform, as being an unfit place for any one and especially a child to be carried. But the child having no adult attendant it clearly became the duty of the conductor to compel it to remove to a safe place within the car. But when one, without authority, volunteers to take charge of of a child, his neglect, or that of the child in his custody, if not beyond that to be expected of one of his age, will not preclude a recovery for the fault of the company: *North Penn. Ry* v. *Mahoney*, 57 Penn. St. 187.

We have thus given a fuller view of the cases than we intended when we began. But we believe it will commend itself to the acceptance of the profession, and if so, we shall rejoice in the accomplishment of what seemed, at one time, a rather hopeless undertaking, the harmonizing of the apparent discrepancies in the cases upon this general question.

I. F. R.

Supreme Court of Errors of Connecticut.

BALLARD *v.* WINTER.

As a general rule the title to personal property perfected in one state, according to the laws of that state, is respected in all other states and countries into which the property may come. The validity of transfers of such property depends in general upon the place of the contract; sometimes the situs of the property is an important consideration. These general rules are, however, subject to the exception that every state must judge for itself how far it will give effect to the laws of other states.

The rule of law in Connecticut which requires a change of possession to accompany sales and mortgages of personal property, in order to perfect the title as against creditors of the vendor or mortgagor, is not a mere rule of evidence, but of positive law. But this rule does not, as such, apply to property located without the jurisdiction of the state, and ought not to be applied to a contract made in good faith in another state, between citizens of that state, according to the laws of that state, in relation to property there situate, with no purpose of being executed in this state, or of evading its laws.

TROVER for three head of cattle; brought to the Superior

Court for Tolland county, and tried on the general issue closed to the jury.

The plaintiff claimed to have proved that on the 22d of March 1869, the plaintiff and one John L. Shaw both resided in the town of Wilbraham, in the state of Massachusetts, on which day Shaw had in his possession at Wilbraham, and was the owner of the cattle described in the declaration; that Shaw on that day at Wilbraham mortgaged the cattle, by a good and valid mortgage deed, to the plaintiff, to secure the payment of a note described in the mortgage, which mortgage was recorded on the records of the town of Wilbraham, in the proper place for recording mortgages of personal property, on the 23d of March 1869, at which time both the mortgagor and the mortgagee resided in Wilbraham, and the cattle were there situated; that Shaw on or about the first of April 1869, without the knowledge or consent of the plaintiff, took the cattle to a farm in the town of Stafford, in this state, and kept them there until on or about the 20th of January 1870, when the defendants took them by virtue of a writ of attachment in favor of Seaman Lull against Shaw, and converted them to their own use.

The defendants requested the court to charge the jury, that a mortgage of such personal property made and executed in Massachusetts would not be good and valid in this state against attaching creditors, if the mortgagee knew that the mortgagor was residing in this state, and had the property in his possession, and permitted him to do so.

The court instructed the jury that if they should find that the mortgage was duly made, executed, and recorded on the records of the town of Wilbraham, according to the laws of Massachusetts, and that the mortgagor and mortgagee were at the time of the execution and recording of the mortgage residents of Wilbraham, and the cattle were there situated during that time, the mortgage would convey a good title to the plaintiff, and the fact that the mortgagor remained in possession of the cattle, and brought them into this state, and kept them here during said time, would not, even if he held himself out as such owner of them, without the knowledge or consent of the mortgagee, affect the title of the plaintiff. But if the jury should find that the plaintiff had in any way permitted the mortgagor to hold himself out as the owner, and the defendants had thereby been misled to their injury, that

the plaintiff would now be estopped from setting up his own title to the property.

The jury returned a verdict for the plaintiff, and the defendants moved for a new trial for error in the charge.

R. Welles and *Lull*, in support of the motion.

West and *Davison*, contrà.

The opinion of the court was delivered by

SEYMOUR, J.—This is an action of trover for the alleged conversion of certain cattle. The plaintiff claims title under a mortgage deed from one Shaw. The defendant denies the validity of the mortgage, and claims title as attaching creditor of Shaw. The question for consideration distinctly appears in the judge's charge, which was as follows:

"If the jury should find that the mortgage was duly made, executed and recorded on the records of the town of Wilbraham, according to the laws of Massachusetts, and that the mortgagor and mortgagee were at the time residents of said Wilbraham, and the cattle were there situated during that time, then said mortgage would convey a good title to the plaintiff, and the fact that the mortgagor remained in possession of said cattle, and brought them into this state and kept them here during said time, would not, even if he held himself out as owner of them, without the knowledge or consent of the mortgagee, affect the title of the plaintiff. But if the plaintiff permitted the mortgagor to hold himself out as owner, and the defendants had thereby been misled to their injury, the plaintiff would be estopped from setting up title."

We think the instructions of the judge to the jury are correct. The mortgage was made in Massachusetts, the parties resided there, and that was the situs of the property. The title by the law of Massachusetts was fully vested in the plaintiff, both as between the parties to the conveyance and as to creditors and subsequent purchasers. By the general rules of law title thus perfected in one state is respected in all other states and countries into which the property may come. The argument of the defendant is, that by Connecticut law retention of possession by the mortgagor is conclusive evidence that the mortgage is fraudulent; that this, being a rule of evidence, ought to be adhered to in our courts; that the question is one of *evidence*, and that such questions are to be governed by the law of the forum. But we think our

law on this subject cannot be regarded as a mere rule of evidence, though it is sometimes stated in that form. It is a rule whereby we require a change of possession to accompany sales and mortgages of personal property, in order to perfect the title as against creditors of the vendor or mortgagor. The ground indeed of the rule is the presumption arising from such retention of possession that the conveyance is a sham. But our law does not leave the question open as one of fact, but gives to the want of change of possession an artificial value, and thus far is a rule of positive law, and not of evidence merely. But this rule of ours does not, as such, apply to property located without the jurisdiction of the state. We claim no right to carry our law into adjoining states. It is familiar law that, in respect to personal property, the validity of transfers depends in general upon the place of the contract; sometimes, as in questions like the present which respect delivery of possession, the situs of the property is an important consideration: *Coote* v. *Jecks*, Law. Rep. 13 Eq. 597. These general rules are subject to the exception that every state must judge for itself how far it will give effect to laws of other states. The property in dispute here being within our jurisdiction, our courts decide whether to apply to the case our own rules, or the laws of Massachusetts. We regard our own rule as a good one, and to be adhered to in respect to property within the limits of the state at the time of the contract, but we think the rule ought not to be applied to contracts made, as this appears to have been, in good faith, in another state, between citizens of that state, in relation to property there situate, with no purpose of being executed in Connecticut, or of evading our laws. It would certainly be very inconvenient if such mortgages, fairly made in Massachusetts, should be held invalid in Connecticut in respect to movable property, which may be daily passing to and fro along the dividing line between the states. Such mortgages have in practice been treated as valid here, and in the Superior Court have been in several instances decided to be so. In the Superior Court in the case of *Koster* v. *Merritt*, 32 Conn. 246, the same rule seems to have been adopted which was adopted by the judge in this case in his charge to the jury.

We therefore advise no new trial.

The foregoing case involves a question of great practical importance to cotermi- nous states, and one that has produced considerable debate, and some conflict

of decisions, in different states. But we believe the great weight of authority, and all principle, will be found in favor of the views maintained in the opinion.

The general rule of private international law is, most unquestionably, that all contracts, made in conformity to the laws of the state where made, will be held valid in all other states, unless made with reference to the laws of some other state and with a view to evade those laws. Thus in *Holman* v. *Johnson*, 1 Cowp. 341, a sale of goods was held valid in a foreign country, although the seller knew the purchaser intended to smuggle them into England, so long as he did nothing to forward the illegal act. But in *Biggs* v. *Lawrence*, 3 T. R. 454, where the goods were packed in such a manner, as to favor the accomplishment of the illegal purpose of the buyer, it was held the seller could not recover the price of the goods, by reason of his participation in such illegal purpose. But the general rule that contracts valid by the law of the place where made are valid everywhere, is of universal acceptance.

But in regard to sales and mortgages of personal property, made according to the law of the place where made, and where the property was at the time, but which afterwards came into other states, where different formalities were required to perfect the sale, for some purposes, there has been discussion, and some conflict of opinion. This question has commonly arisen in regard to the want of change of possession of the property in conformity with the terms of the transfer. Thus in Louisiana, where according to the rule of the civil law a change of possession is required, in order to perfect transfers of personal property, as against the creditors of the assignor or vendor, it has been claimed that the same rule should be applied to transfers of personal property made in other states, but when the property subsequently came into that state. But the courts held otherwise: *Thuret* v. *Jenkins*, 7 Martin 318. But the courts of Louisiana held that where personal property, situate in that state, was attempted to be transferred by the owner, resident in another state, a change of possession was indispensable to perfect the title against creditors: *Norris* v. *Mumford*, 4 Martin 20; *Ramsay* v. *Stevenson*, 5 Id. 23; *Olivier* v. *Townes*, 14 Id. 93. But Mr. Livingston, Dissertations 220, 223, questions the sonndness of these decisions. But there can be no question he is wrong, and the cases right. The general rule that transfers of personal property, valid where made, are valid everywhere, has been recognised in other states: *French* v. *Hall*, 9 N. H. 137; *Douglass* v. *Oldham*, 6 Id. 150. In Vermont the courts at first inclined to require a change of possession to perfect transfers made in other states, where the property then was, but which was afterwards attached in Vermont: *Skiff* v. *Solace*, 23 Vt. 279. But on further consideration that view has been abandoned there, in numerous cases: *Taylor* v. *Boardman*, 25 Vt. 581; *Jones* v. *Taylor*, 30 Id. 42; *Cobb* v. *Buswell*, 37 Id. 337. But the courts of that state have made the same distinction already adverted to as having been made in Louisiana, in regard to property locally situated in a state requiring change of possession to perfect transfers, as against creditors: *Rice* v. *Courtis*, 32 Vt. 460. This exception is here thus stated: "The local rule of policy established in this state, requiring a complete change of possession, in cases of the transfer of personal property, in order to exempt it from attachment upon process against the transferror, is universal in its application to all personal property actually within the state; and therefore it applies to and governs the transfer of such property, though it be owned by a resident of another state, and be there transferred in conformity with the laws thereof, which do not require such a change of possession to

exempt such property from attachment." There is one case, *Montgomery* v. *Wight*, 8 Mich. 143, which seems to hold the same view of the law with *Skiff* v. *Solace*, *supra*, but that is extending the rule of local policy further than reason or justice seem to require. Some cases seem to hold assignments of personal property, made in other states in conformity with the law there, inoperative in their own state, with a view to afford greater facilities to their own citizens for enforcing claims against the owner, than to non-residents: *Zipcy* v. *Thompson*, 1 Gray 243. But the general rule is in conformity with the opinion in the principal case, and this last class of cases does not seem, at present, to meet with much countenance. It is certainly in conflict with the universal comity of states resulting almost of necessity from constant commercial intercourse, and equally with any proper sense of equity and justice.

I. F. R.

Court of Appeals of Kentucky.

MOORE, &c., APPELLANT, *v.* POTTER, TRUSTEE, &c., APPELLEE.

LEHMAN, APPELLANT, *v.* POTTER, TRUSTEE, &c., APPELLEE.

Official bonds and those given by trustees for faithful administration should be construed with reference to the period which they are intended to cover, and not with reference to the date or the time of execution of the instrument.

APPEAL from the Warren Circuit Court.

The facts sufficiently appear in the opinion of the court, which was delivered by

PRYOR, J.—Bennett Burnam by his last will devised to W. V. Loving a considerable amount of money, notes, bonds, &c., to be held by him in trust for the exclusive use and benefit of his daughter Lee Ann during her life, requiring him to pay the interest annually to her and the principal to be paid to her children or their descendants at her death, &c. In the event of the death of Loving, the trustee, or his refusal to act, the will directs that the judge of the Warren Circuit Court shall appoint one or more discreet trustees in his stead, and to require such bond and security as may secure the due performance of the trust, and said appointment to be renewed from time to time when necessary; in no state of the case was the husband of Lee Ann to be made trustee. By a codicil to this will John Burnam and Michael Hall were appointed trustees in conjunction with Loving. Loving alone qualified as trustee, and in a few years after the testator's death resigned his office after making a settlement of his accounts.